

**ORDINANCE NO. 28401**

**AN ORDINANCE OF THE CITY OF SAN JOSÉ ESTABLISHING  
RULE 20A UNDERGROUND UTILITY DISTRICT ALONG ABORN  
ROAD, BETWEEN PUMPHERSTON WAY AND WHITE ROAD**

**WHEREAS**, by Resolution No. 74538, the City Council of San José set a Public Hearing on September 16, 2008 at 1:30 P.M., in the Council Chambers of the City of San José, City Hall, 200 E. Santa Clara Street, at the corner of Fourth and East Santa Clara Streets, San José, to ascertain whether an Underground Utility District should be established in the area designated as "ABORN ROAD UNDERGROUND UTILITY DISTRICT" (hereinafter called "District") and more fully described and shown on EXHIBITS A-1 and A-2 hereto; and

**WHEREAS**, written notice of the Public Hearing has been given pursuant to Section 15.24.050 of the San José Municipal Code, such hearing has been duly and regularly held, and all persons interested have been given a reasonable opportunity to be heard; and

**WHEREAS**, the criteria to form a district as set forth in San José Municipal Code Section 15.24.060 include:

- a. Removal of overhead wires and placement underground will eliminate an unusually heavy concentration of poles and overhead wires within the Proposed District; and

- b. Public streets or rights-of-way within the Proposed District are extensively used by the general public and carry a heavy volume of pedestrian or vehicular traffic; and
- c. Public streets or rights-of-way within the Proposed District adjoin or pass through a civic area or public recreation area or an area of unusual scenic interest to the general public; and

**WHEREAS**, pursuant to Section 15.24.060 of the San José Municipal Code, the City Council hereby finds and determines, based on evidence presented at the Public Hearing including the memorandum from the Director of Public Works dated June 2, 2008, and attached hereto as Exhibit A-3, that the above conditions exist within the proposed district, and public necessity, health, safety, and welfare require and it is in the general public interest that existing poles and overhead wires within the District be removed therefrom and thereafter prohibited and that wires and associated facilities within the District for transmitting, conducting, conveying, distributing, or supplying electricity for the purpose of providing light, heat, power, telephone, telegraph, communication, television, or other similar or associated service be installed underground; and

**WHEREAS**, on June 18, 2008, this Ordinance was found to be categorically exempt from environmental review per the provisions of Section 15302 of the California Environmental Quality Act of 1970, as amended, under File No. PP08-128;

**NOW, THEREFORE, BE IT ORDAINED** by the Council of the City of San José:

**SECTION 1.** The City Council hereby declares that a certain area of the City of San José described and shown on EXHIBITS A-1 and A-2, attached hereto, made a part hereof, and incorporated herein by reference is established as an underground utility district to be designated "ABORN ROAD UNDERGROUND UTILITY DISTRICT" and orders and requires that existing poles and overhead wires within said District be removed therefrom by the operators of the utilities and thereafter prohibited and that wires and associated facilities within said District for transmitting, conducting, conveying, distributing, or supplying electricity for the purpose of providing light, heat, power, telephone, telegraph, communication, television, or other similar or associated service be installed underground subject to all of the provisions and exceptions contained in Part 3, Chapter 15.24, of the San José Municipal Code.

**SECTION 2.** Existing poles and overhead wires and associated facilities within the District for transmitting, conducting, conveying, distributing or supplying electricity for the purpose of providing heat, power, telephone, telegraph, communication, television or other similar or associated service shall be removed by the operators of the utilities no later than August 31, 2010.

Wires and associated facilities within the District for transmitting, conducting, conveying, distributing or supplying electricity for the purpose of providing heat, power, telephone, telegraph, communication, television or other similar or associated service shall be installed underground no later than August 31, 2010.

Persons owning any property as shown on the last equalized assessment roll served by overhead service drops which are extended from poles or spans located within the District must be ready to receive light, heat, power, telephone, telegraph, communications, television, or other similar or associated service by means of

underground wires and facilities no later than August 31, 2010.

**SECTION 3.** The City Council does hereby request that the Pacific Gas & Electric Company and AT&T provide payment, computed pursuant to Rule 20 and Rule 32 respectively for the installation of no more than one hundred (100) feet (measured from the property line) of trenching, excavation, conduit installation, backfill, and surface restoration of each customer's individual service lateral to each qualifying premise affected by the District.

**SECTION 4.** The City Council does hereby request that the Pacific Gas & Electric Company pay, from the existing Rule 20A allocation, for the conversion of electric service panels to accept underground service, up to \$1,500 per service entrance, excluding permit fees.

**SECTION 5.** Within twenty (20) days of the effective date of this ordinance, the Director of Public Works shall give written notice to all affected Utilities owning, possessing, or controlling any poles or overhead wires in the district and all owners and occupants of property affected by said District as required by Sections 15.24.150 and 15.24.160 of the San José Municipal Code.

**SECTION 6.** In lieu of a notice to the Utility Companies for disconnection of service pursuant to Section 15.24.140 of the San José Municipal Code, the Director of Public Works may give an additional notice to any noncompliant property owners or occupants in said District pursuant to Section 15.24.170 of the San José Municipal Code.

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**SECTION 7.** The Director of Public Works is hereby empowered to extend the time for any act required under this ordinance for the period of time and for the reasons set forth in Section 15.24.180 of the San José Municipal Code.

PASSED FOR PUBLICATION of title this 16th day of September, 2008, by the following vote:

AYES: CHIRCO, CHU, CONSTANT, CORTESE, LICCARDO,  
NGUYEN, OLIVERIO, PYLE; REED.

NOES: NONE.

ABSENT: CAMPOS, WILLIAMS.

DISQUALIFIED: NONE.

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CHUCK REED  
Mayor

ATTEST:

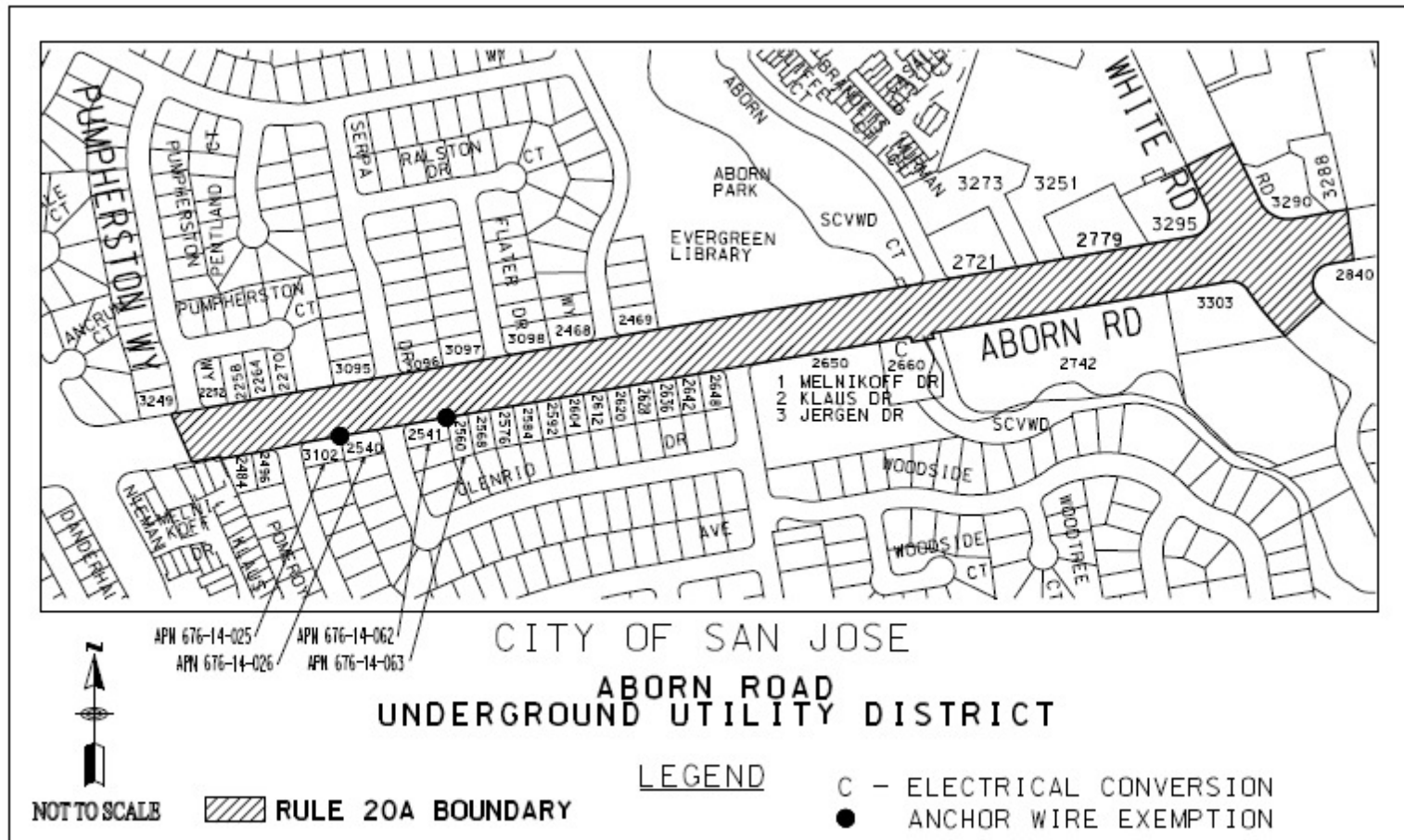
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LEE PRICE, MMC  
City Clerk

Attachments:

Exhibit A-1, Map  
Exhibit A-2, Description  
Exhibit A-3, Staff Memorandum

**EXHIBIT A-1**



**EXHIBIT A-2**

**DESCRIPTION OF PROPOSED BOUNDARY OF AN UNDERGROUND  
UTILITY DISTRICT ALONG ABORN ROAD, BETWEEN PUMPHERSTON WAY  
AND WHITE ROAD.**

All that certain real property situated in the City of San José, County of Santa Clara, State of California, described as follows:

BEGINNING at a true point at the intersection of the northerly right-of-way line of Aborn Road and the westerly right of way line of Pumpherston;

THENCE proceeding in a northeasterly direction 2,730'+/- along the northerly right-of-way line of Aborn Road to a point of intersection with the westerly right-of-way line of White Road;

THENCE proceeding in a northwesterly direction 190'+/- along the westerly right-of-way line of White Road;

THENCE proceeding in a northeasterly direction 130'+/- perpendicular to the center line of White Road to a point of intersection with the easterly right-of-way line of White Road;

THENCE proceeding in a southeasterly direction 230'+/- along the easterly right-of-way line of White Road to a point of intersection with the northerly right-of-way line of Aborn Road;

THENCE proceeding in a northeasterly direction 195'+/- along the northerly right-of-way line of Aborn Road;

THENCE proceeding in a southeasterly direction 130'+/- perpendicular to the center line of Aborn Road to a point of intersection with the southerly right-of-way line of Aborn Road;

THENCE proceeding in a southwesterly direction 140'+/- along the southerly right-of-way line of Aborn Road to a point of intersection with the easterly right-of-way line of White Road;

THENCE proceeding in a southeasterly direction 100'+/- along the easterly right-of-way line of White Road;

THENCE proceeding in a southwesterly direction 130'+/- perpendicular to the center line of White Road to a point of intersection with the westerly right-of-way line of White Road;

THENCE proceeding in a northwesterly direction 185'+/- along the westerly right-of-way line of White Road to a point of intersection with the southerly right-of-way line of Aborn Road;

THENCE proceeding in a southwesterly direction 2,740'+/- along the southerly right-of-way line of Aborn Road to a point of intersection with the westerly right-of-way line extension of Pumpherston Way;

THENCE proceeding in a northwesterly direction 130'+/- perpendicular to the centerline of Aborn Road to the true point of beginning.

Two anchor wires will be exempted at the following locations:

Anchor wire located in the right-of-way between APN 676-14-025 and 676-14-026; Anchor wire located between APN 676-14-062 and 676-14-063.



**Exhibit A-3**



COUNCIL AGENDA: 09-16-08  
ITEM: 7.2

*Memorandum*

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Katy Allen

**SUBJECT: ABORN ROAD RULE 20A  
UNDERGROUND UTILITY  
DISTRICT**

**DATE:** 08-25-08

Approved

*Christine F. Shuppy*

Date

*8-28-08*

**COUNCIL DISTRICT:** 8

**RECOMMENDATION**

Conduct a Public Hearing and adopt an ordinance to establish a Rule 20A Underground Utility District along Aborn Road, between Pumpherston Way and White Road.

**OUTCOME**

Approval of this ordinance will establish the Aborn Road Underground Utility District in accordance with the San José Municipal Code. In addition, it will enable City staff to direct utility companies to begin design of the project. Establishment of this district will improve the appearance, pedestrian mobility and ease of utility equipment maintenance within the area described above.

**EXECUTIVE SUMMARY**

The proposed underground utility district, as specifically described above and depicted in Attachment A, will require utility companies to remove utility poles and aerial cables from the public right-of-way and install an underground system. The actual underground utility district boundary, as depicted in Attachment A, is located along Aborn Road, from Pumpherston Way to 170 feet east of White Road, and on White Road extends 150 feet south and 200 feet north from the intersection with Aborn Road. This proposed project will complement the Evergreen Branch Library and other improvements by businesses and residents in the neighborhood. The project will be funded by utility company funds designated by Rules 20A and 32 of the California Public Utilities Commission (CPUC) and the City's franchise agreement with Comcast.

### **BACKGROUND**

Through Rule 20A, the CPUC requires Pacific Gas and Electric Company (PG&E) to annually set aside funds for financing the undergrounding of overhead distribution facilities located on public streets within the City of San José. The CPUC also requires AT&T, through Rule 32, to set aside funds for undergrounding its facilities where PG&E has been required to underground. Comcast is required by its agreement with the City to budget funds to similarly participate in projects where the PG&E Rule 20A and AT&T Rule 32 funds are programmed for undergrounding. Comcast is required by the City's franchise agreement to budget funds to similarly participate in projects where the PG&E Rule 20A and AT&T Rule 32 funds are programmed for undergrounding.

The proposed Aborn Road Rule 20A Underground Utility District (District) is included in the 2007/2008 – 2012/13 Rule 20A and Rule 20B (In-Lieu Fee) Underground Utility Program Workplan approved by Council in April 2008. It meets criteria approved by the CPUC and the criteria established by the City in 1978 to complete projects that front city facilities, such as parks, libraries, and fire stations.

### **ANALYSIS**

On August 13, 2008, notices of a public hearing were mailed to all utility companies, owners of property, and owners adjacent to the proposed District.

A schedule for establishment and implementation of the proposed Underground Utility District is presented in Attachment B.

### **EVALUATION AND FOLLOW-UP**

Upon City Council's approval of the ordinance at the public hearing, utility companies will begin design of the project. Once the design is near completion, Public Works will mail electrical service conversion packets to all property owners that need their electrical service panel converted to receive service from an underground system. Public Works and utility companies will closely coordinate design and electrical conversion work with the property owners. In addition, continuous coordination will occur during the design and construction phases of the project with the adjacent property owners and others, such as the Santa Clara Valley Water District.

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**PUBLIC OUTREACH/INTEREST**

- ☐ **Criterion 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- ☐ **Criterion 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- ☐ **Criterion 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

The action requested by Council does not meet any of the criteria listed above, but the following outreach will be conducted as part of Section 15.24 of the Municipal Code for the purposes of establishing underground districts.

A community meeting was held on July 1, 2008, to inform the public of this undergrounding project. The property owners attending were concerned with the cost of conversions, process to upgrade services, and phasing of construction (service interruptions). Staff provided information on options to minimize cost of conversions and explained the PG&E policy and procedure for the \$1,500 service conversion reimbursement. Property owners were informed that staff would provide contact information and deadlines to ensure upgrades were appropriately incorporated into the undergrounding design. Upgrades would also require additional costs to the individual property owners based upon the increased level of service.

Property owners were assured that the utility companies would minimize impacts of service interruptions and provide approximately one-month notification of service interruptions. It was explained that power interruptions typically last 3 to 4 hours and other utility interruptions are shorter in duration. In general, the attendees supported the undergrounding and were satisfied with the responses from staff.

Upon Council's approval of the ordinance at the public hearing, Public Works will mail a notice of adoption of ordinance to all utility companies, and property owners of property adjoining the proposed District.

Prior to the start of construction activities, PG&E will place "Door Hanger" construction notices on properties adjoining the proposed District and those affected by construction.

This memo will be posted on the City's website for the September 16, 2008 Council agenda. On September 8, 2008, staff will transmit a supplemental memo should any comments or protest be

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received for consideration at the public hearing.

**COORDINATION**

The establishment of the proposed District and project schedule has been coordinated with the Department of Transportation, PG&E, AT&T, Comcast, Caltrans, Santa Clara Valley Water District, City Manager's Budget Office, and Planning, Building and Code Enforcement Department. The required ordinance has been reviewed by the City Attorney's Office.

**COST SUMMARY/IMPLICATIONS**

1. AMOUNT OF RECOMMENDATION/COST OF PROJECT: None

COST TO UTILITIES:

PG&E Rule 20A Allocation	\$950,000
AT&T Rule 32A.1	490,000
Comcast	<u>160,000</u>
Total Cost to Utility Companies	1,600,000

COST TO CITY:

Project Development, Administration and Construction	
Inspection (Fund 416)	170,000
City Facilities Conversion (20A) (Fund 429)	<u>120,000</u>
Total Cost to City	290,000

**TOTAL PROJECT COSTS (ESTIMATED):** **\$1,890,000**

2. COST ELEMENTS OF AGREEMENT/CONTRACT: 0

3. SOURCE OF FUNDING: Fund 416 - Underground Utility Fund  
Fund 429 - Building and Structure Construction Tax Fund

4. OPERATING COSTS: The proposed operating and maintenance costs of this project have been reviewed and will have no significant impact on the General Fund operating budget.

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**BUDGET REFERENCE**

Fund #	Appn. #	Appn. Name	Total Appn.	Amt. for Contract	2008-2009 Proposed Capital Budget (Page)*	Last Budget Action (Date, Ord. No.)
416	4786	Underground Utility Admin. (20A)	\$350,000	N/A	Capital, V-24	N/A
429	5063	Underground Utilities-City Conversions	\$650,000	N/A	Capital V-906	N/A
<b>Total Current Funding Available</b>			<b>\$1,000,000</b>			

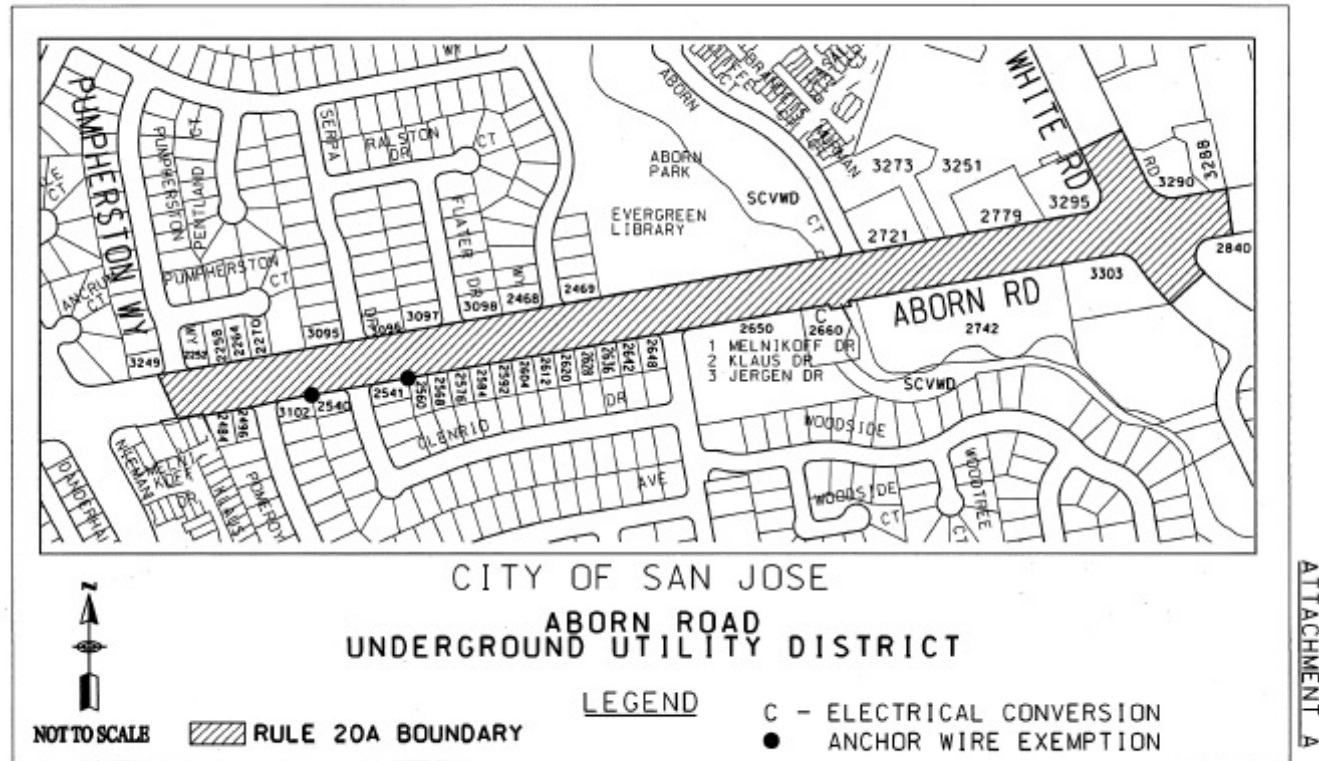
\*The 2008-2009 Capital Budget was adopted by City Council on June 24, 2008.

**CEQA**

CEQA: Exempt, PP08-128.

*Katy Allen*  
KATY ALLEN  
Director, Public Works Department

MO:SK:RV  
(Ordinance Memo Aborn Road 070308.doc)  
Attachments



ATTACHMENT B

UNDERGROUND UTILITY DISTRICT along Aborn Road, between Pumpherston Way and White Road.

Establishment Schedule

August 12, 2008	City Council adopts a resolution setting a time and place for a Public Hearing.
August 13, 2008	Director of Public Works mails a notice of Public Hearing to all adjacent property owners.
September 8, 2008	Director of Public Works transmits a report of comments and/or protests received for consideration at the Public Hearing.
September 16, 2008	City Council conducts a Public Hearing and at its conclusion approves an Ordinance establishing Aborn Road Rule 20A Underground Utility District

Project Implementation Schedule

November 2008	Utility companies begin design of substructure, conduit, vaults, electric and cable facilities.
March 2009	Utilities obtain environmental clearances.
August 2009	Construction starts
August 2010	Utility companies complete connections and remove overhead wires and poles.